



# Lawgics

By Nidhi, Advocate



**Judgment No.: 061**  
**Dt.: 02-02-2024**



<https://chat.whatsapp.com/Te4VxuhvToe76Us7e5>

**CLICK TO JOIN  
WHATSAPP GROUP**

## Judgment Deals With

<b>Section/Rule</b>	Section 54
<b>Authority</b>	Madras High Court
<b>Case Name</b>	M/s.Tulip Nilgiris Exports Pvt. Ltd. VS Additional Commissioner of Central Taxes and Central Excise (Appeals)
<b>Dated</b>	22 <sup>nd</sup> January, 2024

### Brief Facts:

The petitioner is an exporter of processed tea. The petitioner exported goods without payment of IGST against a letter of undertaking and thereafter claimed refund of ITC in respect of the period from July 2017 to November 2017. While claiming refund, the petitioner did not calculate the refund entitlement with reference to the total ITC availed of in the tax period, but on the basis of the ITC attributable to the exports made in the month. This resulted in the petitioner claiming a lower refund than that to which the petitioner was entitled as per law.

While claiming refund in the month of June 2018, the petitioner also claimed the additional refund to which the petitioner asserts entitlement for the period of July 2017 to November 2017 and for the month of May 2018. While the claim pertaining to the month of June 2018 was accepted, claim pertaining to July 2017 to November 2017 was rejected. When the matter was carried in appeal, the appellate authority affirmed the order of the assessing officer.

### Contention of the Department:

The refund claim of the petitioner pertains to June 2018. The refund claim should be made in the manner prescribed and the petitioner cannot be permitted to club claims pertaining to more than one financial year.

### Contention of the Petitioner:

Section 54 of CGST Act, 2017 provides for a 2 year period within which a refund claim may be made. The said 2 year period is required to be computed from the relevant date. As per the explanation set

out in Section 54, the relevant date is the date of export. Since the refund claim was made by the petitioner within 2 years from the date of the relevant export, the refund claim is within the period prescribed by the statute.

Circular No.37/11/2018-GST dated 15.03.2018, recognised that input goods or services may be availed of at a point in time earlier to the date of export of the end product and, therefore, there may be a time lag between the accumulation of unutilised ITC and the date of refund claim. The Circular addresses this concern by permitting clubbing of refund claims for more than one calendar month or more than one quarter.

As regards the stipulation in clause 11.2 of the Circular that the claim cannot be spread across different financial years, learned counsel relied on the judgment of the **Delhi High Court in Pitambra Books Pvt. Ltd. v. Union of India (Pitambra Books), 2020 (34) G.S.T.L. 196 (Del.)**, wherein the Delhi High Court struck down the stipulation that the claim for refund should not span more than one financial year.

#### **Findings & Decision of the Court:**

The conclusion that follows is that a refund claim may be made before the expiry of 2 years from the relevant date. Such relevant date is required to be computed from the date of export of the goods concerned by any mode. Since the refund claim pertains to exports made between July 2017 and November 2017 and the refund application was filed on 09.01.2019, it is clear that such refund application was made within 2 years from the relevant date.

Circular No.37, clarifies that refund claims may be made not only on a calendar month basis but by clubbing claims pertaining to more than one calendar month or more than one quarter. The restriction imposed by the said Circular with regard to refund claims spanning more than one financial year was struck down by the Delhi High Court in Pitambra Books on the ground that it curtails the 2 year period prescribed by statute.

It leads to the conclusion that the refund claim of the petitioner was made within the period of limitation prescribed by statute.

The appellate authority concluded that the refund claim can only be made with regard to a specific calendar month. This conclusion is contrary both to statutory prescription and Circular No.37. Therefore, the order impugned was unsustainable and was quashed.

Therefore, the matter was remanded to the Department to examine the entitlement of refund with reference to relevant documents and applicable provisions. The Department was directed to provide a reasonable opportunity to the petitioner and thereafter readjudicate the refund application.

**We expressly disclaim liability to any person in respect of anything done in reliance of the contents of this publication.**